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HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P. NO.348 OF 2007

PETITIONERS Amreek Singh & Tuttu & another

Vs

RESPONDENTS Surendra Singh & another

ORDER

POST ON 5th SEPTEMBER 2007

Sd/-
Dhirendra Mishra
Judge

(74)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CR.M.P. NO.348 OF 2007

PETITIONERS

1. Amreek Singh @ Tuttu, S/o Late Narayan Singh, aged about 50 years.
2. Harmindar Singh, S/o Late Narayan Singh, aged about 50 years.

Both residents of Handi Chowk, Raigarh, Tahsil and District Raigarh (C.G.)

Vs

RESPONDENTS

1. Surendra Singh, S/o Chakradhar Singh, aged about 59 years, R/o Rajapara, Motimahal, Raigarh, Tahsil & District Raigarh [CG].
2. State of Chhattisgarh, through District Magistrate, Raigarh (C.G.).

Present:

Mrs. Hamida Siddique, Advocate for the petitioners.

Mr. Ashsih Gupta, Advocate for respondent No.1.

Mr. Sushil Dubye, Govt. Adv. for respondent No.2.

O R D E R

(Passed on 5th.9.2007)

Per Dhirendra Mishra, J:

1. The petitioners by the instant petition under Section 482 of Code of Criminal Procedure, 1973 (for brevity 'Cr.P.C.') have impugned the order dated 16.8.2007 (Annexure A-1) passed in Criminal Revision No.120/2007 by learned Sessions Judge, Raigarh whereby learned Sessions Judge has rejected the stay application of the petitioners herein.

2. At the outset learned counsel for respondent No.1 submits that during pendency of this petition order of Annexure P-2 passed by the Sub Divisional Magistrate, Raigarh has

(5)

already been executed and the instant petition has become infructuous.

3. Learned counsel for the petitioner submits that respondent No.1 herein has filed an application (Annexure A-3) under Section 145 of Cr.P.C. alleging therein that they are the owners and possessors of the disputed property and the petitioners wanted to dispossess them by any means. Earlier a civil suit was filed against Kum. Urvashi Devi, his daughter, and in that civil suit prayer for temporary injunction was made. However, their application for temporary injunction was rejected by the Civil Court with a finding that the plaintiffs do not have prima-facie case and since then the petitioners herein are trying to grab the disputed land by force, as they have got their names mutated in the land records on the basis of forged sale deeds. There is likelihood of breach of peace in relation to the dispute with respect to the disputed property and therefore, they should be declared possessors of the disputed property.

On the basis of above application property was attached as per order of the Sub Divisional Magistrate on 11.7.2002 and the same was given in the interim custody of the Ward Member namely Ms. Afroz Begum. However, the Sub Divisional Magistrate vide its order dated 1.3.2004 (Annexure A-7) dropped the proceedings under Section 145 of Cr.P.C. and property in question was released from attachment vide Annexure P-8. Against the said order of Annexure A-7 a criminal revision was preferred by the respondent No.1 herein, which was partially allowed by the learned 1st Additional Sessions Judge, Raigarh vide order dated 29.4.2006 (Annexure A-9) and the matter was remitted to the Sub Divisional Magistrate with a direction

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to ascertain as to which of the party was in possession at the time of attachment and in case it is not possible to ascertain the above fact, in such circumstance, the order of attachment should be passed for such period till the competent civil court decides as to which of the party is entitled for possession. However, the Sub Divisional Magistrate, without recording any evidence only on the basis of arguments advanced by respective parties and documents adduced by them, held that respondent No.1 herein was in possession of disputed land at the time of attachment and accordingly the disputed land was directed to be given in possession of respondent No.1.

Referring to the spot inspection report of Annexure A-5 it was argued that the petitioners were in possession of the disputed property and the same was given by them on rent to their two tenants. It was further contended that from perusal of the statement of Murari Dubey (Annexure A-11) & memo of the Station House Officer, City Kotwali, Raigarh (Annexure A-12) addressed to the Sub Divisional Magistrate it would be evident that in fact the petitioners are in possession of the disputed property and the Sub Divisional Magistrate without conducting any enquiry about the actual possession only on the basis of orders passed in the application for temporary application has held the respondent No.1 herein to be in possession of the disputed land.

4. On the other hand, learned counsel for respondent No.1 submitted that at the time of attachment the property was an open place, as is evident from the order of attachment. The police authorities in collusion with the petitioners illegally gave the possession of disputed property to the petitioners after the proceeding under Section 145 was

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dropped in the first round. However, after the matter was remitted by the Additional Sessions Judge, the Sub Divisional Magistrate after hearing the parties and after going through the documentary evidence adduced by the respondent No.1 herein has recorded a finding that the respondent No.1 is in possession of the disputed property and directed to handover the possession. The above order has already been executed and the possession has been restored to the respondent No.1 and as such, the instant petition has become infructuous.

5. I have heard learned counsel for the parties and perused the record.

6. After going through the record, I am of the opinion that ends of justice will be served if this petition is disposed of with a direction to learned Sessions Judge, Raigarh to decide the Criminal Revision No.120/07 expeditiously preferably within a period of two months from the date of receipt of this order and till then both parties are directed to maintain status quo with respect of the possession of the property as it obtains today. Both the parties are directed to appear before the learned Sessions Judge, Raigarh on **12th September, 2007**.

7. Ordered accordingly.

Sd/-
Dhirendra Mishra
Judge

5/9/2007

Roshan/-